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Municipal Corporations—Responsibility for Highways

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In an action against individual school teachers for negligence, in that they failed to maintain adequate supervision of physical education activities in the course of their employment, plaintiff served a notice of claim only upon the school district employer of the teachers. A statute[40] provides that no action founded upon tort shall be brought against a school district, board of education, official or teacher unless notice is given pursuant to law.[41]

On a motion to dismiss the complaint against the teachers, the Court decided[42] that sufficient notice had been given by service on the school district, the requirement of notice being in derogation of the plaintiff's right to sue without performing a condition precedent and thus to be strictly construed. Historically the notice of claim has been applied only to public corporations, and when the legislature has desired to require that the notice be served on both the public corporation and the employee, it has clearly and explicitly so stated.[43] In the instant case, the Court decided that the legislative intent and the function of the notice statute was fulfilled by service on the school district alone.

Responsibility for Highways

In a negligence action against the State for failing to maintain a highway in proper condition, it was determined that the State is responsible for highways formerly in the State system which have been discontinued unless specific notice has been given to the governmental unit on which the burden of maintenance falls.[44]

In 1926 the State relocated Route 245 so as to improve the junction of that road with Route 5, and in so doing discontinued a portion of the old route. The discontinued portion had been, prior to its accession to the State highway system, an Ontario County highway. From 1926 until 1949, when plaintiff travelled the road as a passenger in an automobile, the road was not repaired or maintained in any way.

At the time of its discontinuance from the State system, the Superintendent of Public Works made an order of discontinuance pursuant to the statute governing the situation,[45] the last paragraph of which order stated: "Ordered: That such section be and it is hereby turned over to the Town of Geneva, Ontario County,

40. N. Y. EDUCATION LAW § 3813.
41. N. Y. MUNICIPAL CORPORATIONS LAW § 50.
42. *Sandak v. Tuxedo Union School Dist.*, 308 N. Y. 226, 124 N. E. 2d 295 (1954).
43. N. Y. MUNICIPAL CORPORATIONS LAW §§ 50(b) (c), (d).
44. *Geraghty v. State*, 309 N. Y. 188, 128 N. E. 2d 302 (1955).
45. Now N. Y. HIGHWAY LAW § 62.

for future maintenance and repair." A copy of this order was sent to the Ontario County Board of Supervisors.

More recent amendments to the Highway Law[46] specifically state that a discontinued portion of the State system reverts to the governmental unit having it before the State, and that notice of any such discontinuance must be given to that governmental unit. The Court, while recognizing that these amendments were not in effect when this road was discontinued, held that they are declaratory of the meaning of the earlier statute, and did not create any substantive change in duties. Therefore, responsibility for maintenance of the discontinued portion of Route 245 fell to the County of Ontario, and the court was left only to decide whether the copy of the order of discontinuance was sufficient notice to the County.

The Court held that it was unreasonable to consider the County as put on notice by a document which specifically placed the duty of maintenance elsewhere. Even though the statements in the order relating to the Town of Geneva could have no legal effect upon the town, it was not deemed notice to the County of any liability falling upon it.

The dissent argued that the State, by the terms of the statute, was ordered to divest itself of all responsibility for maintenance and repair of the road. The County had notice of this fact, since it was part of a public statute, and also had notice that it had controlled the highway previous to its accession to the State system. It should have realized that the duty of maintenance could not have lodged elsewhere. The order, by making clear State discontinuance, would admittedly have been sufficient notice had the last paragraph been omitted altogether. Therefore, argued the dissent, it is absurd to reject notice because of a typographical error in a paragraph unncessary to the notice.

In the somewhat unusual situation where only two alternative liabilities are possible, there is considerable justification for this position. The purpose of notice, however, is the protection of persons and property,[47] rather than protection of the governmental unit, and therefore it may be proper to demand a more exact notice. Because of the impossibility of joining the State and the County as defendants in one action,[48] the only effective way to protect a plaintiff's interests is to require a definite placing of responsibility elsewhere before releasing the State. Otherwise, an unfortunate plaintiff may find two courts excusing two defendants, leaving him without remedy.

46. *Ibid.*
47. *Isaac v. Town of Queensbury*, 277 N. Y. 37, 12 N. E. 2d 785 (1938).
48. The State can be sued only in the Court of Claims. N. Y. COURT OF CLAIMS ACT §8-9. The County could not be joined as co-defendant in the Court of Claims *Id* § 9.